

1 BILL NO. G-90-06-01

2
3 GENERAL ORDINANCE NO. *Withdrawn*

4 AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF
5 FORT WAYNE, INDIANA ESTABLISHING A MINORITY AND
6 WOMEN-OWNED BUSINESS ENTERPRISE.

7 WHEREAS, Chapter 11, Article IV., "The Minority Business
8 Enterprise/Women Business Enterprise Ordinance" of the
9 Municipal Code of the City of Fort Wayne, Indiana was not
renewed after a review of said Ordinance by the legal staff
of the City of Fort Wayne in light of a 1989 decision of the
Supreme Court of the United States; and

10 WHEREAS, The City Council hereby finds that in hiring
11 and dealing with contractors and subcontractors of all types,
12 public and private owners, developers, contractors, financial
13 institutions and sureties have discriminated and do
discriminate against minority and women's businesses doing
business with the City of Fort Wayne based on the race and
sex of the owners of these businesses; and

14 WHEREAS, but for the past and present minority and
15 women's business enterprise ordinances, the City of Fort
16 Wayne would have been, and would continue to be, a passive
participant in the discrimination against these businesses;
and

17 WHEREAS, the provisions of this Article are necessary to
18 remedy the discrimination against minority and women's
19 businesses and to prevent the City of Fort Wayne from
financing and participating in this discrimination with its
contracting dollars; and

20 WHEREAS, further study of the nature and extent of the
21 discrimination against minority and women's businesses must
22 be conducted to determine whether additional amendments to
23 the program are necessary. The continuation of the program
during the period of this study is necessary to prevent
irreparable injury to such businesses.

24 NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF
25 THE CITY OF FORT WAYNE, INDIANA THAT:

26 SECTION 1. A new article of the Municipal Code of the
27 City of Fort Wayne, entitled "Chapter 11., Article IV.
Minority and Women's Business Enterprises" is hereby added,
which contains the following language:

28 "ARTICLE. IV. MINORITY AND WOMEN'S BUSINESS ENTERPRISES

29 Sec. 11-12. Definitions.

30 All words shall have their ordinary and usual meanings except
31 those defined in this section which shall have in addition,
the meaning set forth below. In the event of conflict, the
32 specified definition spelled out below shall presumptively,
but not conclusively prevail.

"Architectural and Engineering Contracts," shall mean
contracts for the performance of architectural and
engineering services by licensed and registered firms and
persons acting as consultants to the City of Fort Wayne.

1 "Broker," shall mean a business which purchases goods or
2 services from another business or businesses for the sole
3 purpose of resale to the City or a contractor doing business
4 with the city.

5 "Certification," shall mean the process by which the Contract
6 Compliance Division of the Community and Economic Development
7 Department of the City of Fort Wayne determines a business
8 meets the criteria for a minority-owned business enterprise,
9 a women-owned business enterprise, and/or a combination
10 minority and women's business enterprise.

11 "City" means the City of Fort Wayne, Indiana.

12 "Combination Minority and Women Business," means a business
13 certified as a combination minority and women's business
14 enterprise by the Contract Compliance Division of the
15 Community and Economic Development Department of the City of
16 Fort Wayne.

17 "Director" means the director of the department of Community
18 and Economic Development of the City of Fort Wayne.

19 "Commercially Useful Function," shall mean the performance of
20 real and actual services in the discharge of any contractual
21 endeavor. The contractor must perform a distinct element of
22 work which the business has the skill and expertise as well
23 as the responsibility of actually performing, managing and
24 supervising. In determining whether a business is performing
25 a commercially useful function, factors, including but not
26 limited to the following, will be considered:

27 1. Whether the business has the skill and expertise to
28 perform work for which it is being/has been certified; and

29 2. Whether the business actually performs, manages and
30 supervises the work for which it is being/has been certified;
31 and

32 3. Whether the business purchases goods and/or services
from a non-minority/women's business enterprise and simply
resells goods to the city, city contractor, or other person
doing business with the city for the purpose of allowing
those goods to be counted towards fulfillment of
minority/women's business enterprise utilization goals.

"Conduit," shall mean a minority/women's business with which
a contractor has agreed to subcontract, when the
minority/women's business does not perform the subcontract,
and instead the subcontract is performed by a non-
minority/women's business.

"Construction Contracts," shall mean those contractual
arrangements made by the City of Fort Wayne for the
construction, repair, rehabilitation, alteration, conversion
or extension of buildings, parks, streets or other
improvements to real property.

"Consultant Contracts," shall mean those contractual
arrangements made for the procurement of expert personal,
professional and/or technical services. Consultant contracts
shall not include architectural and engineering contracts as
defined by this chapter.

"Contract Awarding Authority," shall mean any person with the
power to enter into a contractual arrangement binding the
City of Fort Wayne and shall also mean the particular office,
agency or division on whose behalf the contract is entered.
In addition, this term shall include, but shall not be
limited to heads of county departments, divisions or offices.

1 "Contractor," shall mean any person, partnership,
2 corporation, or other type of business entity which has a
3 contract with the City of Fort Wayne or serves in a
4 subcontracting capacity with an entity having a contract with
5 the City of Fort Wayne for the provision of goods and/or
6 services.

7 "Department," shall refer to any department as defined by the
8 City of Fort Wayne ordinance or other applicable law and
9 shall similarly discharge those duties this article requires
10 of city departments.

11 "Front," shall mean a business which purports to be a
12 minority/women's business but which is actually owned and/or
13 controlled in a manner which is inconsistent with the
14 requirements of certification.

15 "Goals," shall mean those separately designated annual goals
16 for the use by the City of Fort Wayne of minority/women's
17 businesses. The goals shall be expressed as numerical
18 percentages of the total dollar value of all contracts to be
19 awarded by the city. These goals shall be applicable to
20 businesses organized for profit, along with governmental
21 agencies and quasi-governmental agencies, unless the agencies
22 are as specifically excepted by or in accordance with the
23 provisions of this article.

24 "Joint Venture," shall mean an association of two or more
25 persons, partnerships, corporation or any combination of
26 them, established to carry on a single business activity
27 which is limited in scope or direction. The degree to which
28 a joint venture may satisfy relevant utilization goals cannot
29 exceed the proportionate interest of the minority/women's
30 business held as a member of the joint venture in the work to
31 be performed. The agreement establishing the joint venture,
32 partnership or other multi-entity relationship shall be in
writing. Further, minority/women's participation in a joint
venture shall be based on the sharing of real economic
interest in the venture and shall include proportionate
control over management, interest in capital acquired by the
joint venture, and interest in earnings.

33 "Legitimately Owned and Controlled," shall mean for the
34 purpose of determining whether a business is "minority
35 business" that minorities shall possess:

36 1). Ownership of at least fifty-one percent interest in
37 the business, unless the minority business qualifies as a
38 corporate sponsored dealership under the provisions of this
39 subsection. The ownership shall be real and continuing, and
40 shall go beyond the pro forma ownership of the business
41 reflected in the ownership documents. The minority owner(s)
42 shall enjoy the customary incidents of ownership and shall
43 share in the risks and profits commensurate with their
44 ownership interests, as demonstrated by an examination of the
45 substance, rather than the form, of arrangements.

1 2). Control over management, interest in capital,
2 interest in profit or loss and contributions to capital,
3 equipment and expertise on which the claim of minority-owned
4 status under this article is based. The minority owners must
5 possess and exercise the legal power to direct the management
6 and policies of the business and to make the day-to-day as
7 well as major decisions on matters of management, policy, and
8 operations. If the owners of the business who are not
9 minorities are disproportionately responsible for the
10 operation of the business, then the business is not
11 controlled by minorities. The business must be owned,
12 controlled, and managed on a day-to-day, full-time basis by
13 the minority owner(s). The requirements of this subsection
14 shall not apply, if the minority business qualifies as a
15 corporate sponsored dealership under the provisions of this
16 section.

17 3). Ownership and control shall be measured as though
18 not subject to the community property interest of a spouse if
19 both spouses certify that:

20 a). Only one spouse participates in the management of
21 the business;

22 b). The nonparticipating spouse relinquishes control
23 over his/her community property interest in the subject
24 business.

25 "Mayor," means the Mayor of the City of Fort Wayne, Indiana.

26 "Minority Business," means a business certified by the
27 Contract Compliance Division of the Community and Economic
28 Development Department of the City of Fort Wayne as a
29 minority business enterprise which is legitimately owned and
30 controlled by a minority person or persons as defined in this
31 section. The Director is authorized to determine that
32 specific racial groups have not been discriminated against in
their ownership and operation of particular trades or areas
of business or in the particular geographical areas in which
they operate. The Director may exclude such businesses from
consideration as "minority businesses" under this article, in
connection with contracts involving such trades or areas of
business.

 "Minority or minorities," means a person who is a citizen of
the United States and who is a member of one or more of the
of the following historically disadvantaged racial groups:

1). Black: Having origin in any of the black racial
groups of Africa;

2). Hispanic: Of Mexican, Puerto Rican, Cuban, or
Central or South American culture or origin;

3). Asian American: Having origins in any of the
original peoples of the Far East, Southeast Asia, the Indian
subcontinent, or the Pacific Islands; or

4). American Indian or Alaska Native: Having origins
in any of the original peoples of North America.

 The Director shall have the discretion to make a final
decision as to whether an individual is a minority.

 "Pass-Through," means buying or obtaining goods from a non-
women's business, non-minority business or non-combination
women/minority business, and reselling or transferring those
goods to the city, city contractors or other persons doing
business with the city for the purpose of obtaining any
advantage or benefit conferred under this article, without
performing a commercially useful function.

1 "Percentage Factor," shall mean the special ranking factors
2 established by this article to be applied in certain
competitive bid situations where minority/women's businesses
respond to solicitation or are included as subcontractors in
responding parties' responses to solicitation.

3 "Purchasing Contracts," shall mean, but not be limited to,
4 those contracts which are awarded by the department of
Purchasing of the City of Fort Wayne, or any contract awarded
by the City of Fort Wayne for the purchase of tangible goods.

5 "Requirements," shall mean those efforts which responding
6 parties, the City of Fort Wayne and the particular
department, shall make to meet the city's goals, including
7 but not limited to the percentage factors and set aside
requirements established by this article.

8 "Responding Party," shall mean any person, partnership,
9 corporation or business entity which makes a proposal as
defined in this article in response to a solicitation as
10 defined in this article.

11 "Service Contracts," shall mean those contracts for
12 technical, professional or other work performed by a vendor,
such as the making of repairs, servicing, maintenance and/or
13 cleaning, and which does not involve the provision of
substantial tangible items such as materials, supplies or
14 equipment. For the purposes of this article, the term
"service contracts" shall not include construction, rental or
15 leasing of equipment or the traditional professional services
such as consulting, legal services, feasibility studies and
design studies.

16 "Set Aside," shall mean the proportion of each contract
17 awarding authority's annual expenditure for contract goods
and services which equals the contract awarding authority's
18 annual goals for participation of minority/women's businesses
as established by this article.

19 "Small Business Concern," shall mean a small business as
20 defined pursuant to Section 3 of the federal Small Business
Act and relevant regulations promulgated thereto.

21 "Solicitation," shall mean a contract awarding authority's
22 request for the provision of any or more of the following:
goods and services of any kind, equipment leases, and
23 rentals/purchase of space. Solicitation shall include
requests for proposals, invitations to bid and similar items.

24 "Solicitation specifications," shall mean any documents,
25 literature or other information accompanying a solicitation
which provides additional data regarding the contract
26 awarding authority's request.

27 "Violating Party," shall mean a person or entity which has
violated a provision or provisions of this chapter.

28 "Waiver Statement," shall mean a written statement directed
29 to the Director containing reasons why any provision or
provisions of this chapter shall not apply to a particular
30 person, partnership, corporation, business entity, contract
awarding authority, department, or other entity. Where a
31 waiver of waivers are granted, the goals shall be applied in
a manner so as to reflect the loss of the monetary value of
32 those contracts exempted from the requisites of this article.

1 "Women's Business," means a business certified by the
2 Contract Compliance Division of the Community and Economic
3 Development Department of the City of Fort Wayne
4 as a women's business enterprise. The Director is authorized
5 to determine that women as a class have not been
6 discriminated against in their ownership and operation of
7 particular trades or areas of business or in the particular
8 geographical areas in which they operate. The Director may
9 exclude such businesses from consideration as "women's
10 businesses" under this article, in connection with contracts
11 involving such trades or areas of business, according to the
12 procedure provided for in this article.

13 Sec. 11-13. Powers and Duties.

14 The Director shall have responsibility for administering,
15 monitoring, and enforcing the goals and requirements
16 identified in this article, and further shall:

- 17 1). Establish rules, regulations, and procedures for
18 implementing and administering this article;
- 19 2). Recommend to the Mayor annual goals for the City of
20 Fort Wayne;
- 21 3). Have the authority to enter into cooperative
22 agreements with other government agencies concerned with
23 increasing the participation of minority/women's businesses
24 in government contracting;
- 25 4). With the advice of contract awarding authorities,
26 formulate and periodically update a plan to make
27 minority/women's businesses aware of contracting
28 opportunities with the City of Fort Wayne;
- 29 5). Review all City of Fort Wayne solicitation lists
30 and where possible, place minority/women's businesses on such
31 lists. These lists shall be updated periodically.

32 Sec. 11-14. Goals.

On or before the first day of January of each year, the
Director shall submit to the Mayor for approval, proposed
goals for the City of Fort Wayne for that calendar year.
Separate goals shall be established for the use of minority
businesses and for the use of women's businesses. These
goals shall be established separately for each of the
following types of contracts: architectural and engineering
contracts, construction contracts, consultant contracts, and
purchasing and service contracts. The goals shall be made
part of the City of Fort Wayne Affirmative Action Plan.

A). The goals shall be reasonably achievable. To the
extent that relevant information is available, the goals
shall be based on the numbers of qualified minority
businesses and women's businesses operating in the City of
Fort Wayne.

B). The purpose of this article is to remedy the past
effects of discrimination by increasing the opportunities for
minority and women's businesses to provide goods and services
to the City of Fort Wayne using reasonably achievable goals.

1). Each goal shall represent a minimum percentage of
the dollars paid annually by each contract awarding
authority to minority/women's businesses.

2). The proposed goals shall be accompanied by a
statement which shall identify the factors in this
subsection and any other factors used in formulating the
proposed goals.

3). Any proposed reduction in goals shall be
accompanied by a statement which documents that reducing
levels is consistent with this purpose.

Each department shall annually formulate a contract forecast estimating the number, probable monetary value, (if known), type of contracts and the estimated solicitation date for the contracts the department expects to award along with any waivers it expects to request in the upcoming year. In addition, an implementation plan describing how the particular department will accomplish its goals shall be formulated. On or before January 1st of each year, each department will submit these documents to the director, department of Community and Economic Development.

Sec. 11-15. Accomplishment of goals.

A). For all contracts, accomplishment of goals established by this chapter shall be based on the dollar amount of the contract in question. Accomplishment of the goals shall be calculated in the following manner:

1). General: The dollar value of any and all contracts awarded by a contract awarding authority to a minority/women's business shall be counted towards accomplishment of the applicable goals.

a). The total dollar value of each contract awarded to businesses owned and controlled by both minority males and non-minority females shall be apportioned on the basis of the percentage of ownership to the goals for minorities and women respectively.

b). The total dollar value of a contract with a minority/women's business owned and controlled by a minority of women shall be either counted toward the minority goal or the goal for women, or apportioned on the basis of ownership between minorities and women, not to both.

2). Subcontracts: If a contractor uses subcontractors who are minority/women's businesses, the amount which is given to the minority/women's business for their work on the contract shall be credited towards meeting the applicable goals.

3). Joint Venture: Where one or more minority/women's businesses are participants in a joint venture with one or more non-minority or non-women's businesses, the amount of money received by the minority/women's business enterprise shall be calculated in proportion to their participation in the joint venture in accomplishing the applicable goals.

4). Supplies/Materials: The contract awarding authority or a prime contractor may count toward its goals:

a). expenditures for materials and supplies obtained from minority/women's business suppliers and manufacturers; provided that, the minority/women's business assume the actual and contractual responsibility for the provision of the materials and supplies;

b). its entire expenditure made to a minority/women's business manufacturer; that is, a supplier that produces goods from raw materials or substantially alters them before resale;

c). the amount of the commission paid to minority/women's businesses and resulting from a particular contract with the city; provided that a minority/women's business supplier performs a commercially useful function in the process.

5). Brokers, Fronts, or Similar Pass-Through Arrangements. Businesses acting as brokers, fronts, conduits, or similar pass-through arrangements shall not be certified as minority/women's business enterprises, unless the brokering service reflects normal industry practice and the broker performs a commercially useful function. Such businesses determined to be acting under these arrangements or persons who create such arrangements shall be subject to the penalties enumerated in this article.

B). The Contract Compliance Officer of the department of Community and Economic Development shall calculate the accomplishment of goals for the City of Fort Wayne. In the event of disputes regarding these calculations, a department may request review of the director's decision by the Mayor.

C). After having met their annual goals, departments shall continue to make affirmative efforts to do business with minority/women's businesses.

D). The failure of a department or the City of Fort Wayne to meet annual dollar goals established from time to time by this chapter shall not constitute grounds for a lawsuit against a department of the City, provided that the department or the City has made good faith efforts to meet those goals. The failure of a department to meet the requirements of this chapter shall be reviewed by the Mayor and corrective action taken where appropriate.

Sec. 11-16. Goal requirements, in general.

A). In order to meet the goals established in accordance with this article, efforts including but not limited to the following shall be made:

1). Under the auspices of the director, department of Community and Economic Development, technical assistance shall be provided and outreach programs shall be established.

2). Prior to entering into any contract, the contract awarding authority shall:

a). Make good faith efforts to solicit proposals from minority/women's businesses;

b). Examine alternatives for arranging contracts by size and type of work so as to enhance the possibility of participation by minority/women's businesses.

3). Prior to submitting any bid, proposal, or other response to a solicitation for which subcontractors may be used, responding parties shall make good faith affirmative efforts to contact, solicit bids and proposals from, and use minority/women's businesses.

4). The following shall be included in the body of the contract document in any and all contracts signed between a contract awarding authority and a contractor:

a). A provision indicating that this article is incorporated by reference into any and all City of Fort Wayne contracts and failure to comply with any of the requirements of the article by a contractor will be considered a breach of contract.

b). A requirement that during the term of the contract the contractor shall comply with, as to tasks and proportionate dollar amounts throughout the term of the contract, all plans made in their proposal for the use of minority/women's businesses. In the absence of a waiver, minority/women's businesses which for any reason no longer remain associated with the contract or the contractor shall be replaced with other certified minority/women's businesses.

1 c). A provision prohibiting any agreements between a
2 responding party and a minority/women's business in
3 which the minority/women's business promises not to
4 provide subcontracting quotations to other responding or
5 potential responding parties.

6 d). The requirement of maintenance of relevant records,
7 and information necessary to document compliance with
8 this article and shall include the right of the city to
9 inspect such records.

10 e). A provision requiring the payment of specific
11 liquidated damages in the event a contractor fails to
12 perform a commercially-useful function and/or operates
13 as a broker, front, conduit or pass-through, with the
14 amount liquidated damages established in advance by the
15 department of Community and Economic Development based
16 on the type of contract involved. The provision should
17 include the following language: The purpose of the City
18 of Fort Wayne's minority/women's business ordinance is
19 to provide a prompt remedy for the effects of past
20 discrimination. The city in general, and this program
21 in particular, are damaged when a contract, or portion
22 of a contract, to be performed by a minority/women's
23 business is not actually performed by a minority/women's
24 business enterprise in compliance with this article.

25 Sec. 11-17. Goal requirements, in specific.

26 A). For all purchasing, service, and construction contracts
27 under ten thousand dollars, the following percentage factor
28 shall be used in determining which responding party is the
29 lowest responsible bidder, and shall further adhere to I.C.
30 5-17-1.

31 B). For every construction, architectural and engineering
32 and consultant contracts the following set aside requirements
shall be met:

1) Contracts for construction, consultant, and
architectural/engineering services, the estimated cost
of which exceeds then thousand dollars, shall require
responding parties to include in their responses to
solicitation both minority and women's business
participation in the contract in a percentage which
equals or exceeds the percentages determined for the
contract by the director. The Director shall determine
the percentages for each contract based on the extent of
subcontracting opportunities presented by the contract
and the availability of minority and women's business
enterprises qualified to perform such subcontracting
work. Such percentages may be higher or lower than the
annual goals for the type of contract involved.

2). Where a contract is awarded to a minority or
women's business, the set aside requirements of these
subsections shall not apply.

3) As part of the bid package, all responding parties
shall identify the dollar amount of minority/women's
business participation. All responding parties shall
also identify the particular minority/women's businesses
to be used in performing the contract, specifying for
each the dollar value of the participation, the type of
work to be performed, and other information as may
reasonably be required to determine the responsiveness
of the bid or proposal; provided that , for bids on
construction contracts, this information shall be
submitted no later than the close of the first City of
Fort Wayne business day after bid opening.

1 4). During the term of the contract, any failure to
2 comply with the percentages of minority/women's business
3 participation identified in the bid or proposal shall be
4 considered a breach of contract. The dollar value of
5 the total contract used for the calculation of the set-
6 aside shall be increased or decreased to reflect
7 executed change orders unless:

8 (a) a waiver is obtained in accordance with Sec.
9 11-18(A) after consultation among the contract awarding
10 authority, the director, and the contractor; or

11 (b) the department obtains a reduction in the
12 amount of the set-aside according to the procedure in
13 11-17(B), except that the reduction request for change
14 orders need not be submitted prior to solicitation of
15 bids or proposals.

16 C). Departments may request a reduction in the amount of the
17 set-aside for either or both minority business enterprises or
18 women's business enterprises, by submitting the reasons
19 therefor in writing to the director, department of Community
20 and Economic Development of the City of Fort Wayne, prior to
21 solicitation of bids or proposals.

22 1). The Director may grant such a reduction upon
23 determination that:

24 a). The reasonable and necessary requirements of the
25 contract render subcontracting or other participation of
26 businesses other than the bidder or proposer infeasible
27 at the adopted goal levels; or

28 b). Qualified minority and women's business enterprises
29 capable of providing the goods or services required the
30 contract are unavailable in the market area of the
31 project, despite every reasonable attempt to locate
32 appropriate minority and women's business enterprises to
meet adopted goals.

33 c). The available minority and/or women's businesses
34 have given price quotes which are unreasonable high in
35 that they exceed competitive levels beyond amounts which
36 can be attributed to cover costs inflated by the present
37 effects of discrimination.

38 2). Any reductions in set-aside amount granted by the
39 Director shall specify the amount to which the set-aside has
40 been reduced.

41 C). When this section specifies that a set-aside or a
42 percentage factor shall be used for a particular type of
43 contract, the method specified is the preferred method for
44 achieving the goals. A department may use the other method
45 in its solicitation documents for a specific contract if it
46 determines that a method other than the one established by
47 this section will be a more reasonable method of achieving
48 the annual goal. In the event that a department chooses to
49 use a method other than the one specified in this section, it
50 shall include in its annual report to the Mayor, as required
51 by Sec. 11-19(D) of this article, documents demonstrating
52 that a method other than the one established by this section
53 is a more reasonable method of achieving the annual goal.

54 D). All solicitation documents shall include the applicable
55 requirements of Secs. 11-16 and 11-17. In addition,
56 documents shall include a minority/women's business in which
57 the minority/women's business promises not to provide
58 subcontracting quotations to other responding or potential
59 responding parties. Bids, proposals, and other responses
60 which fail to meet the requirements of this section shall,
61 within the limitations of federal and state law, be deemed
62 non-responsive unless a waiver has been granted pursuant to
63 Sec. 11-18 of this article.

1 E). The percentage factor and set-aside requirements of this
2 section shall not apply to contracts awarded for the
3 remainder of any calendar year in which the contract awarding
4 authority is determined by the director, to have met the
5 applicable city goals as established by this article. The
6 percentage factor and set-aside provisions of this section
7 shall again apply in each succeeding calendar year until the
8 annual goals for that year have been met by the contract
9 awarding authority.

10 Sec. 11-18. Waivers.

11 Contract awarding authorities, along with or on behalf of
12 responding parties and contractors, may apply for waiver of
13 one or more requirements of this chapter as they apply to a
14 particular contract or contracts.

15 A). Waivers may be granted by the director, department of
16 Community and Economic Development, in any of the following
17 circumstances:

18 1). When the needed goods and services are readily
19 available from only one source, in which case the contracting
20 awarding authority shall submit a written justification of
21 the need for sole source treatment to the director,
22 department of Community and Economic Development, who shall
23 grant or deny the request for waiver within three business
24 days;

25 2). Emergencies, in which case emergency contracting
26 shall be handled in accordance with the requirements of Sec.
27 11-1(d) of the Municipal Code of the City of Fort Wayne.

28 3). Contracts for which neither a minority nor women's
29 business is available to provide needed goods or services, in
30 which case a waiver may be applied for in accordance with
31 procedures to be developed by the director, department of
32 Community and Economic Development. Prior to granting a
waiver, the director, department of Community and Economic
Development, shall certify that a minority/women's business
is in fact not available to provide the needed goods and/or
services.

4). When available minority and/or women's businesses
have given price quotes which are unreasonably high in that
they exceed competitive levels beyond limits which can be
attributed to cover costs inflated by the present effects of
discrimination.

B). Where the Mayor determines that compliance with the
requirements of this article would impose an unwarranted
economic burden on, or risk to the City of Fort Wayne as
compared with the degree to which the purposes and policies
of this chapter would be furthered by requiring compliance
he/she may reduce or waive the requirements of this
ordinance; PROVIDED THAT, upon taking such action, the City
of Fort Wayne Mayor shall notify the members of the City
Council.

30 Sec. 11-19. Monitoring, reporting, and enforcement.

31 A). The Mayor, through the director, shall have the
32 responsibility for monitoring implementation of the
requirements of this article and shall have the power to
request from departments, responding parties and/or
contractors any relevant records, information and documents.

1 B). Contract awarding authorities, with the assistance of
2 the Contract Compliance Officer of the department of
3 Community and Economic Development, shall keep complete and
4 detailed records regarding compliance with this article. The
5 records shall include the dollar value and the subject matter
6 of each contract along with the name of the contractor, the
7 participation levels, (in dollars, number of contracts
8 awarded, and type of work), of minority/women's businesses
9 where the contract award provides for participation, and
10 other information as the Director deems necessary.

11 C). The Director shall be responsible for gathering all
12 information concerning compliance with this article and shall
13 have access to all pertinent City of Fort Wayne records.

14 D). With the assistance of the director, each department
15 shall submit to the Mayor an annual report on its performance
16 in meeting the goals required by this article on or before
17 January 1st of each year. This report shall include the
18 number and dollar amount of contracts awarded; the number and
19 dollar amount of contracts with minority/women's business
20 participation; the number of contracts which involved the use
21 of subcontractors, suppliers or similar assisting roles; the
22 number of minority/women's businesses used in such roles; the
23 number, type and dollar amount of contracts awarded pursuant
24 to the percentage factor and set-aside provisions of this
25 article; and the basis on which the department determined
26 that a method other than the one specified in Sec. 11-17 of
27 this article should be used. The report shall also identify
28 problems in meeting the requirements of this chapter, if any,
29 and suggestions for improvements.

30 E). Certification and Recognition Process.

31 1). The City of Fort Wayne's minority business and
32 women's business enterprise program is only for minorities
and minority business and women's businesses and combination
businesses as defined in Sec. 11-12; therefor the Director
shall recognize only those combination minority and women's
business enterprises or minority business enterprises
certified by the State of Indiana which also meet the
definitions of Sec. 11-12, according to minority status
information provided to the City of Fort Wayne by the Office
of Minority and Women's Businesses of the State of Indiana.
Businesses are only eligible for City of Wayne's programs so
long as they remain certified by the State of Indiana or the
Department of Community and Economic Development.

2). It shall be considered a violation of this chapter
to obtain, or attempt to obtain, certification or the
benefits of any provision of this article, on the basis of
false or misleading information provided to the City of Fort
Wayne.

3). No contract requiring or proposing minority/women's
business participation may be entered into unless all
minority/women's businesses identified to meet the goals by a
responding party were, at the time the bid was submitted,
certified by the Community and Economic Development
Department of the City of Fort Wayne.

4). No business shall apply to the City of Fort Wayne
in order to participate in programs established by this
article.

1 F). Upon receipt of a written and signed allegation that any
2 contractor, subcontractor, or vendor has violated any
3 provision of this article, or if a violation is discovered
4 from information gained through compliance monitoring, or
5 upon reason to believe that a violation may be occurring, the
6 Director or his or her designee, shall order an
7 investigation. If there is probable cause to believe that a
8 violation has occurred, the Director or his or her designee
9 will, upon ten days' written notice to the alleged violating
10 party, conduct a hearing to determine whether a violation has
11 occurred. The hearing shall be recorded and each party shall
12 have the right to call and examine witnesses, and to be
13 represented by anyone of his/her choice lawfully permitted to
14 do so. The parties shall include the complainant, if any,
15 the alleged violating party, and a representative of the
16 director, or the agency conducting the investigation. The
17 Director may suspend progress payments on a contract pending
18 the outcome of the hearing. Unless otherwise agreed to by
19 all parties, the hearing shall be commenced no later than
20 twenty-one days after service of a written notice of
21 violation.

22 G). After the hearing, the Director shall make written
23 findings and conclusions and shall order one or more of the
24 following:

25 1). Dismissal of the complaint when a violation is
26 found not to have occurred;

27 2). Suspension or cancellation of the contract in part
28 or in whole;

29 3). Disqualification and/or debarment of the violator
30 from participation in city contracts for a period of up to
31 five years;

32 4). Exclusion of the violator from future contracts or
vending until demonstration of compliance;

5). Enforcement of any provision of the contract
providing remedies, such as penalties or liquidated damages
for violation of contractual provisions, or enforcement of
any other remedy available under the laws of the City of Fort
Wayne. Upon finding by the Director that a contractor has in
fact failed to perform a commercially useful function or has
operated as a broker, front, conduit or pass-through
business, liquidated damages specified in the contract shall
be imposed unless the Director finds that imposition of such
damages would be clearly inequitable, in which case the
Director may order appropriate relief.

H). Upon receipt of a written and signed allegation that any contract awarding authority has violated any provision of this article, or if a violation is discovered from information gained through compliance monitoring, the Mayor shall order an investigation. If there is probable cause to believe that a violation has occurred, the Mayor or his/her designee will, upon ten days written notice to the alleged violating party, conduct a hearing to determine whether or not a violation has occurred. The hearing shall be recorded and each party shall have the right to call and examine witnesses, to produce documentary and physical evidence, to cross-examine witnesses, and to be represented by anyone of his/her choice lawfully permitted to do so. The parties shall include the complainant, if any, the alleged violating party, and a representative of the executive or the agency conducting the investigation. Unless otherwise agreed to by all parties, the hearing shall be commenced no later than twenty-one days after service of a written notice of violation.

I). After the hearing, the Director shall make written findings and conclusions and shall order one or more of the following:

- 1). Dismissal of the complaint when a violation is found not to have occurred;
- 2). Corrective action;
- 3). Enforcement of any other remedy available under the laws of the City of Fort Wayne.

J). Upon receipt of a written and signed allegation that a business owner is improperly being considered to be, or has improperly been rejected as, a minority business or women's business as defined in this article, or that a waiver or reduction of set-aside requirements has been improperly denied or granted, or if such information is discovered from information gained through compliance monitoring, the Director shall order that an investigation be conducted. The allegations or subsequent hearings on such allegations shall not be grounds to postpone or restrain the award of any contracts then being advertised or for which bids have been received. If there is probable cause to believe that corrective action is warranted, the Director or his/her designee will, upon ten days written notice to all interested parties of whom he/she is aware, and upon publication of notice of the hearing in the manner provided for the advertising of contracts, conduct a hearing to determine whether or not the allegation is correct. The hearing shall be recorded and each interested party shall have the right to call and examine witnesses, to produce documentary and physical evidence, to cross-examine witnesses, and to be represented by anyone of his/her choice lawfully permitted to do so. The hearing officer (who shall be appointed by the Mayor) shall permit testimony to be given by any parties which would be directly affected by the matter.

After the hearing, the Director shall make findings and conclusions and shall order appropriate corrective action, if any.

1 K). In addition to any other remedy available under the laws
2 of the City of Fort Wayne and the State of Indiana, any
3 person, firm, corporation, business, union, or organization
4 which prevents or interferes with a contractor and/or
5 subcontractor's efforts to comply with the requirements of
6 this article or which submits false or misleading information
7 to any City of Fort Wayne department or employee concerning
8 compliance with this article shall be subject to a civil
9 penalty of up to one thousand dollars (\$1,000.00) for each
10 occurrence, the City of Fort Wayne having previously complied
11 with the notice and hearing provisions of this ordinance.
12 Each submission of false or misleading information shall
13 constitute a separate occurrence.

14 L). When conducting any investigation or preparing for a
15 hearing under this section, the Director shall have authority
16 to request the attendance and testimony of witnesses, the
17 presenting of evidence including but not limited to books,
18 records, correspondence or documents in the possession or
19 under the control of the person appearing, and access to
20 evidence for the purpose of examination. The Director shall
21 consult with the city attorney before conducting any
22 investigations under this section. If an individual fails to
23 appear, or refuses to testify when requested concerning any
24 matter under investigation, the Director may invoke
25 suspension of contract payments or may bar the contractor
26 from future participation in City contracts.

27 Sec. 11-20. Annual reports required.

28 In addition to the Mayor's proposing minority/women's
29 business contracting goals and programs in the required
30 annual Affirmative Action Plan, the department of Community
31 and Economic Development shall make a report to the City
32 Council detailing performance of the program. At a minimum,
the report shall:

1 A). Provide statistical evidence, supported by a narrative
2 explanation where appropriate, showing contracts awarded to
3 minority/women's business, by type of contract, dollar value,
4 and contract awarding authority.

5 B). If any contractor, contract awarding authority,
6 department, has been granted a waiver from the provisions of
7 this article, identifying the specific contract or bid
8 process, parties involved and the reasons for the waiver's
9 approval.

10 C). As appropriate, identify actions taken, by individual
11 case, where it has been alleged that a contractor,
12 subcontractor, vendor or contract awarding authority has
13 violated the provisions of this article.

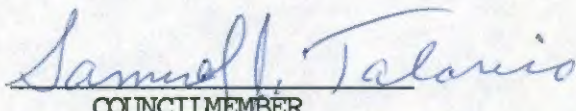
14 D). As appropriate, recommend amendments to the chapter,
15 substantiated by fact, designed to accomplish overall program
16 goals in a cost-effective manner.

17 Sec. 11-20.1. Effect of Ordinance, status of solicitations.

18 Each of the provisions of this chapter shall apply to all
19 contracts for which a solicitation is released after the
20 effective date of that provision of this article."

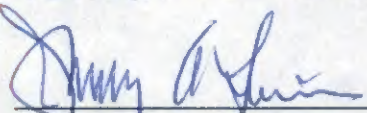
1 SECTION 2. Severability. The provisions of this
2 ordinance shall be effective in all cases unless otherwise
3 provided for by State or Federal Law. The provisions of this
4 ordinance are separate and severable. The invalidity of any
5 clause, sentence, paragraph, subdivision, section, of portion
6 of this ordinance or the invalidity of the application
7 therefor to any person or circumstances shall not affect the
8 validity of the remainder to this chapter, or the validity of
9 its application to other persons or circumstances.

10 SECTION 3. This Ordinance shall be in full force and
11 effect from and after its passage and effective date, any and
12 all necessary approval by the Mayor, and its legal
13 publication thereof.

14 
15 COUNCILMEMBER

16 APPROVED AS TO
17 FORM ONLY.

18 NOT APPROVED AS TO LEGALITY

19 
20 Stanley A. Levine
21 Legal Advisor to
22 Fort Wayne Common Council
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Read the first time in full and on motion by Bradbury, seconded by Dalman, and duly adopted, read the second time by title and referred to the Committee on Regulations (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Council Conference Room 128, City-County Building, Fort Wayne, Indiana, on _____, the _____ day of _____, 19____, at _____ o'clock _____ M., E.S.T.

DATED: 5-22-50

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Read the third time in full and on motion by Bradbury, seconded by _____, and duly adopted, placed on its passage. PASSED LOST by the following vote:

	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>
<u>TOTAL VOTES</u>	_____	_____	_____	_____
<u>BRADBURY</u>	_____	_____	_____	_____
<u>BURNS</u>	_____	_____	_____	_____
<u>EDMONDS</u>	_____	_____	_____	_____
<u>GIAQUINTA</u>	_____	_____	_____	_____
<u>HENRY</u>	_____	_____	_____	_____
<u>LONG</u>	_____	_____	_____	_____
<u>REDD</u>	_____	_____	_____	_____
<u>SCHMIDT</u>	_____	_____	_____	_____
<u>TALARICO</u>	_____	_____	_____	_____

DATED: _____

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (ANNEXATION) (APPROPRIATION) (GENERAL) (SPECIAL) (ZONING MAP) ORDINANCE RESOLUTION NO. _____ on the _____ day of _____, 19____,

ATTEST

SEAL

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the _____ day of _____, 19____, at the hour of _____ o'clock _____ M., E.S.T.

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Approved and signed by me this _____ day of _____, 19____, at the hour of _____ o'clock _____ M., E.S.T.

Paul Helmke
PAUL HELMKE, MAYOR

